

Rules of

Department of Transportation

Division 10—Missouri Highways and Transportation

Commission

Chapter 6—Outdoor Advertising

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**Title 7—DEPARTMENT OF
TRANSPORTATION**
**Division 10—Missouri Highways and
Transportation Commission**
Chapter 6—Outdoor Advertising

7 CSR 10-6.010 Public Information

PURPOSE: This rule informs interested persons how they may obtain information and materials about state outdoor advertising control.

(1) General Information. Sections 226.500—226.600, RSMo regulate outdoor advertising in Missouri adjacent to the interstate and primary highway systems. The Missouri General Assembly has delegated authority to the Missouri Highway and Transportation Commission to implement these statutes. The Missouri Highway and Transportation Commission has adopted administrative rules, 7 CSR 10-6, under these statutes. These rules have the force and effect of law and should be read together with the statutes.

(2) Organization. The Missouri Highways and Transportation Commission controls and acts by and through the Missouri Department of Transportation which is directed by the director of transportation. For purposes of this rule, the state is geographically divided into seven (7) areas. Each area office is headed by a permit specialist who is responsible to the outdoor advertising manager for supervising all outdoor advertising activities within that area. Counties in each area are as follows: Area No. 1 includes: Barton, Bates, Cass, Cedar, Clay, Dade, Henry, Jackson, Johnson, Lafayette, Platte, St. Clair, Vernon; Area No. 2 includes: Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Putnam, Ralls, Randolph, Schuyler, Scotland, Shelby, Sullivan; Area No. 3 includes: Benton, Boone, Callaway, Camden, Cole, Cooper, Gasconade, Hickory, Howard, Maries, Miller, Moniteau, Morgan, Osage, Pettis, Phelps, Pulaski, Saline; Area No. 4 includes: City of St. Louis, Crawford, Franklin, Jefferson, Lincoln, Montgomery, Perry, Ste. Genevieve, St. Charles, St. Francois, St. Louis, Warren, Washington; Area No. 5 includes: Barry, Christian, Dallas, Douglas, Greene, Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Polk, Stone, Taney, Webster, Wright; Area No. 6 includes: Bollinger, Butler, Cape Girardeau, Carter, Dent, Dunklin, Howell, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Reynold, Ripley, Scott, Shannon, Stoddard, Texas, Wayne; Area No. 7 includes: Andrew,

Atchison, Buchanan, Caldwell, Carroll, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway, Ray and Worth.

(3) How to Obtain Information and Materials. Information and materials regarding outdoor advertising control, including copies of sections 226.500—226.600, RSMo, administrative rules, application forms, maps of the interstate and primary highway systems, and district maps showing the location of the district offices and the counties within each district, may be obtained in person, by writing or by telephoning the district engineer, Missouri Department of Transportation: Area No. 1, 5117 East 31st Street, Kansas City, MO 64128, (816) 889-6353; Area No. 2, U.S. Route 63—P.O. Box 8, Macon, MO 63552, (660) 385-3176; Area No. 3, 1511 Missouri Boulevard, P.O. Box 718, Jefferson City, MO 65102, (573) 751-9289; Area No. 4, 1590 Woodlake Drive, Chesterfield, MO 63017, (314) 340-4327; Area No. 5, 3025 East Kearney—P.O. Box 868, Springfield, MO 65801, (417) 895-7648; Area No. 6, 2910 Baron Road, Poplar Bluff, MO 63901, (573) 840-9292; Area No. 7, U.S. Route 63—P.O. Box 8, Macon, MO 63552, (660) 385-8267.

(4) Forms are available from the outdoor advertising permit specialist in each area.

AUTHORITY: section 226.530, RSMo Supp. 1998. Original rule filed April 11, 1972, effective April 30, 1972. Rescinded and readopted: Filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 226.530, RSMo 1965, amended 1972, 1995.*

7 CSR 10-6.015 Definitions

PURPOSE: This rule provides definitions of terms in addition to those terms defined in section 226.510, RSMo.

(1) Back-to-back sign, double-faced sign or V-type sign is a sign with two (2) sides or outdoor advertising faces, with not more than two (2) displays to each side or faces, with not more than two (2) displays to each side or facing, which are physically contiguous, or connected by the same structure or cross-bracing or located not more than fifteen feet (15') apart at their nearest point. Each face or

side may be as large as eight hundred (800) square feet in area.

(2) Changed conditions means a change in facts or local ordinance, such as but not limited to, discontinuance of a commercial or industrial activity, decrease in the limits of an urban area, reclassification of a secondary highway to interstate or federal aid primary or National Highway System (NHS) highway status, upgrading of an urban primary highway to freeway status or amendment of a comprehensive local zoning ordinance from commercial to residential or the like.

(3) Director of transportation means the director of transportation of the Missouri Department of Transportation appointed by the Missouri Highways and Transportation Commission under section 226.040, RSMo or the director of transportation's authorized representative.

(4) Commercial or industrial activities are defined in section 226.540(5), RSMo.

(5) Commission means the Missouri Highways and Transportation Commission.

(6) Department means the Missouri Department of Transportation.

(7) Directional and other official signs means only official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs.

(8) Display means a single graphic design which advertises goods, services or businesses.

(9) District engineer means any one (1) of the ten (10) Missouri Department of Transportation district engineers or the district engineer's authorized representatives.

(10) Division means the right-of-way division unless otherwise specified.

(11) Double-stacked means sign faces placed one above another on a single structure. This definition shall not include faces or signs maintained in a side-by-side configuration.

(12) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish.

(13) Exempt billboard means a billboard erected by those organizations that are required to be permitted and are exempt from paying any fees. These organizations include



religious, service, fraternal and veteran organizations.

(14) Federal or state law means a federal or state constitutional provision or statute or an ordinance or rule enacted or adopted by Missouri or a federal agency or a political subdivision in Missouri pursuant to a federal or state constitution or statute.

(15) Flashing means emitting a series of sudden and transient outburst of light.

(16) Highway means any existing highway or a project for which the commission's right-of-way division has authorized the purchase of right-of-way.

(17) Intermittent means occurring at intervals.

(18) Landmark signs means outdoor advertising determined by agreement between the commission and the secretary of transportation to have been lawfully in existence on October 22, 1965, and to be of historical or artistic significance under section 226.545, RSMo.

(19) Lawful means lawfully erected and in compliance with all other legal requirements including, but not limited to, permit requirements, payment of biennial inspection fees and in the case of nonconforming signs, the requirements of 7 CSR 10-6.060(3).

(20) Lawfully erected means erected prior to January 1, 1968 or erected after January 1, 1968, in compliance with the sizing, lighting, spacing, location, permit and all other requirements of sections 226.500–226.600, RSMo as provided by those sections at the erection date of the sign; or erected after January 1, 1968, and before March 30, 1972, in compliance with the sizing, lighting, spacing and location requirements in effect at the time of erection, but for which a permit was not obtained prior to March 30, 1972.

(21) Maintain means allow to exist.

(22) Main-traveled way means the through traffic lanes of the highway, exclusive of frontage roads, outer roads, auxiliary lanes, ramps and all shoulders.

(23) Modify applies to sign structures existing prior to August 28, 1999, which complied with the requirements with sizing, lighting, spacing, location, permit and all other requirements of sections 226.500–226.600, RSMo as provided by those sections at the erection date of the sign and not deemed non-

conforming for failure to comply with the provisions of this chapter until such sign's structure is modified, repaired, replaced or rebuilt. After which, the provisions of 7 CSR 10-6.060 apply to signs of this category. Modify is altering, enlarging or extending the facing, raising or lowering the structure itself, the addition of lights or lighting, replacing or changing poles, bracing, supports, or type of materials.

(24) Nonconforming sign or nonconforming outdoor advertising means a sign which was lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which later fails to comply with state statutes due to changed conditions.

(25) On-premises sign is limited to outdoor advertising which advertises—the sale or lease of the property upon which it is located, the name of the establishment or activity located upon the premises upon which it is located, or the principal products or services offered by the establishment or activity upon the premises upon which it is located.

(26) Outdoor advertising permit review committee consists of the assistant chief engineer-operations, assistant chief engineer-design, and the division director of the right-of-way division or their designees.

(27) Parkland means any publicly-owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historic site.

(28) Premises is limited to improvements, buildings, parking lots, landscaping, storage or processing areas as well as any other contiguous land actually used in connection with the premises or for access.

(29) Readily accessible access means easy and convenient availability without obstruction and is maintained adjacent to an official roadway designated by a state, county or local authority and can be traversed by a regular passenger vehicle.

(30) Regular intervals means hours of operation posted and occurring uniformly on a regular basis.

(31) Scenic area means any area of particular scenic beauty or historic significance as determined by the federal, state or local officials having jurisdiction of the area and includes interests in land which have been acquired for the restoration, preservation and enhancement of scenic beauty (see 7 CSR 10-6.020).

(32) Secretary of transportation means the United States Secretary of Transportation.

(33) Sign means outdoor advertising as defined by section 226.510(3), RSMo.

(34) Spot zoning for outdoor advertising or strip zoning for outdoor advertising means an amendment, variance or exception to the comprehensive local zoning ordinance classifying or zoning a parcel of land as commercial, industrial or suitable for outdoor advertising, out of harmony with the zoning classification or uses of surrounding land as determined by the chief engineer.

(35) State means the state of Missouri.

(36) Unlawful signs or unlawful outdoor advertising are those identified as unlawful in sections 226.580.1 and 226.580.2, RSMo and 7 CSR 10-6.080(2), and nonconforming signs which have failed to comply with the requirements of 7 CSR 10-6.060(3).

(37) Unzoned area means an area where there is no comprehensive zoning regulation. It does not include areas which have rural zoning classifications, land uses established by zoning variances or special exceptions under comprehensive local zoning ordinances.

(38) Unzoned commercial or industrial areas or unzoned commercial or industrial land is defined by sections 226.540(4) and 226.540(5), RSMo and 7 CSR 10-6.040(2)(B).

(39) Urban area is defined in section 226.510(6), RSMo.

(40) Visible means capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity. A person of normal visual acuity is any person licensed by Missouri to operate a motor vehicle upon the highways of this state.

(41) Zoned commercial or industrial areas or areas which are zoned industrial, commercial or the like per section 226.540(5), RSMo and which meet the requirements of 7 CSR 10-6.040(2)(C).

AUTHORITY: sections 226.150, RSMo 1994 and 226.530, RSMo Supp. 1998. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed Feb. 4, 1991, effective Aug. 30, 1991. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972, 1995.*

7 CSR 10-6.020 Directional and Other Official Signs

PURPOSE: *This rule provides standards for the selection, erection and maintenance of directional and other official signs and notices authorized by section 226.520(1), RSMo which are consistent with federal regulations, 23 CFR 750.151, implemented under 23 U.S.C. 131(c)(1). This rule does not apply to signs erected by the Missouri State Highway and Transportation Commission on highway right-of-way under sections 226.525 and 226.535, RSMo or to signs, displays or devices providing directional information about goods and services in the interest of the traveling public under section 226.520(5), RSMo and 7 CSR 10-6.060(2)(D).*

Editor's Note: *The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.*

(1) Definitions (see 7 CSR 10-6.015).

(2) Categories of Directional and Other Official Signs. Directional and other official signs include the following five (5) classes of signs:

(A) Official signs and notices are signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state or local law for the purpose of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs;

(B) Public utility signs are warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly- or privately-owned public utilities, as essential to their operations;

(C) Service club and religious notices are signs and notices, where erection is authorized by law, relating to meetings of nonprofit service clubs, charitable associations or religious services;

(D) Public service signs are signs located on school bus stop shelters which shall—

identify the donor, sponsor or contributor of the shelters; contain public service messages, which shall occupy not less than fifty percent (50%) of the area of the sign; contain no other message; and be located on school bus shelters which are authorized or approved by city, county or state law, regulation or ordinance and at places approved by the city, county or state agency controlling the highway involved; and

(E) Directional signs are signs containing directional messages about public places owned or operated by federal, state or local governments or their agencies; publicly- or privately-owned natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed by the commission to be in the interest of the traveling public.

(3) Standards for Official Signs and Notices.

(A) General. These signs do not include official traffic signs such as street name signs, speed limit signs or other directional or regulatory signs.

(B) Size. There are no size limitations.

(C) Lighting. Signs may be illuminated subject to the restrictions of subsection (7)(C) of this rule.

(D) Spacing. There are no spacing limitations.

(4) Standards for Public Utility Signs.

(A) Size. There are no size limitations.

(B) Lighting. Signs may be illuminated subject to the restrictions of subsection (7)(C) of this rule.

(C) Spacing. There are no spacing limitations.

(5) Standards for Service Club and Religious Notices.

(A) Size. Any number of displays or emblems may be secured to a single structure. Each display or emblem shall not exceed eight (8) square feet in area.

(B) Lighting. Signs may be illuminated subject to the restrictions of subsection (7)(C) of this rule.

(C) Spacing. There are no spacing limitations.

(6) Standards for Public Service Signs.

(A) Size. Each sign may not exceed thirty-two (32) square feet in area.

(B) Lighting. Signs may be illuminated subject to the restrictions of subsection (7)(C) of this rule.

(C) Spacing. There are no spacing limitations except that not more than one (1) sign on each shelter shall face in any one direction.

(7) Standards for Directional Signs. The following standards apply only to directional signs:

(A) General. The following directional signs are prohibited: signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities; signs which obstruct or interfere with the driver's view of approaching, merging or intersecting traffic; signs which move or have any animated or moving parts; signs located in rest areas, parklands or scenic areas; and signs not lawfully existing under section 226.550.2., RSMo or unlawful signs under section 226.580, RSMo and 7 CSR 10-6.080(2);

(B) Size. No sign shall exceed the following limits: maximum area—one hundred and fifty (150) square feet; maximum height—twenty feet (20'); and maximum length—twenty feet (20'). All dimensions include border and trim but exclude supports;

(C) Lighting. Signs may be illuminated, subject to the following restrictions: signs which contain, include or are illuminated by any flashing, intermittent or moving lights are prohibited; signs which are not effectively shielded so as to prevent beams or rays of light from being directed to any portion of the traveled way of an interstate or primary highway or which are of an intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited; and no sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device or signal;

(D) Spacing. Each location of a directional sign must be approved by the district engineer prior to its erection. No directional sign may be located within two thousand feet (2000') of an interchange or intersection at grade along the interstate system or freeway primary highway (measured along the interstate or freeway primary highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way). No directional sign may be located within two thousand feet (2000') of a rest area, parkland or scenic area; no two (2) directional signs facing the same direction of travel shall be spaced less than one (1) mile apart. Not more than three (3) directional signs facing the same direction of travel may be erected along a single route approaching the activity or attraction. Signs located adjacent to the interstate system shall be within seventy-five (75) air miles of the activity or attraction. Signs located adjacent to the primary system shall

be within fifty (50) air miles of the activity or attraction;

(E) Message Content. The message on directional signs shall be limited to the identification of the attraction or activity and directional messages useful to the traveler in locating the attraction or activity, such as mileage, route numbers or exit numbers. Descriptive words or phrases and pictorial or photographic representations of the activity or attraction, or its environs are prohibited and disqualify the sign from being maintained as a directional sign; and

(F) Selection Method and Criteria.

1. Criteria. Activities and attractions qualifying for directional signing shall be limited to—public places owned or operated by federal, state or local governments or their agencies; publicly- or privately-owned natural phenomena, historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation. Privately-owned activities or attractions must be deemed by the commission to be nationally or regionally known and of outstanding interest to the traveling public. Upon request, the applicant for a directional sign permit shall submit sufficient evidence to the district engineer for the commission to determine whether or not the activity or attraction is nationally or regionally known and of outstanding interest to the traveling public.

2. Selection. The commission shall determine those public and private activities and attractions which qualify for directional signing. After filing an application for a directional sign permit, the applicant may petition the commission to determine whether or not a specific public or private activity or attraction is eligible for directional signing. The petition may be in letter form and shall include: a statement by the owner of the activity or attraction describing the activity or attraction and evidence that the activity or attraction is nationally or regionally known and is of outstanding interest to the traveling public. In the case of any publicly-owned activity or attraction, the petition must also be accompanied by the written consent or approval of the federal, state or local political subdivision having legal authority or control over the activity or attraction where the authority is not the applicant requesting that the activity or attraction be designated as eligible for directional signing. The commission may grant the applicant, upon request, a public hearing to aid the commission in reaching a decision of whether or not the activity or attraction qualifies for directional signing. This hearing would be informal and would not be subject to the procedural requirements

of Chapter 536, RSMo. In exceptional cases, the commission may require review and concurrence by the secretary of transportation before reaching a decision. Petitions and requests for public hearing must be in writing and addressed to the district engineer for the county in which the activity or attraction is located (see 7 CSR 10-6.010).

(8) Permits. See 7 CSR 10-6.070 for state permit requirements.

AUTHORITY: sections 226.150 and 226.530, RSMo 1986. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972.*

7 CSR 10-6.030 On-Premises Signs

PURPOSE: This rule provides criteria for exempting from control on-premises signs authorized by section 226.520(2), RSMo consistent with federal regulations, 23 CFR 750-709, implemented under 23 U.S.C. 131(c).

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Definitions (see 7 CSR 10-6.015). In particular, see 7 CSR 10-6.015(22) and (25) for definitions of on-premises sign and premises, respectively.

(2) Criteria.

(A) Size. There are no size limitations.

(B) Lighting. There are no lighting limitations for on-premises signs in sections 226.500–226.600, RSMo but signs which purport to be or imitate or resemble official traffic-control devices or railroad signs or signals, or which attempt to direct the movement of traffic, or which hide from view or interfere with the effectiveness of an official traffic-control device or any railroad sign or signal are prohibited by section 304.321, RSMo.

(C) Spacing. There are no spacing limitations or limitations on the number of on-premises signs per each premises.

(D) Strips. Land connected to the main portion of the premises by a thin strip of land either owned or leased by the owner of the premises or sign owner is not considered part of the premises unless the strip of land is actually used in connection with or for access to the establishment or activity being advertised. If the strip size is sufficient only for outdoor advertising or is used only for outdoor advertising, the strip does not qualify as a part of the premises.

(E) Intervening Land Use. Signs on land separated from the advertised establishment, activity or property by an intervening land use such as a highway, another unrelated commercial activity, a residence or an agricultural activity do not qualify as on-premises signs.

(F) Rental Income. A sign which produces rental income for the owner or lessee of the premises, which consists principally of brand name or trade name advertising and which only incidentally advertises the principal or accessory products or services offered upon the premises upon which it is located does not qualify as an on-premises sign.

(G) Products and Services Not Offered Upon Premises. A sign which advertises in a prominent manner, as determined by the chief engineer, a product or service not offered upon the premises upon which the sign is located in addition to a product or service which is offered upon the premises upon which the sign is located, does not qualify as an on-premises sign. A sale or lease sign which also advertises any product or service not offered upon the premises and which is unrelated to the activity conducted on the premises or selling or leasing the land on which the sign is located does not qualify as an on-premises sign.

(3) Permits. There is no state permit requirement, sections 226.530 and 226.550, RSMo.

AUTHORITY: sections 226.150 and 226.530, RSMo 1986. Original rule filed Feb. 1, 1973, effective March 2, 1973. Amended: Filed Dec. 20, 1973, effective Jan. 30, 1974. Amended: Filed Sept. 19, 1974, effective Oct. 19, 1974. Rescinded and readopted: Filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed June 15, 1993, effective Jan. 31, 1994.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972.*

7 CSR 10-6.040 Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas

PURPOSE: This rule supplements the requirements for erection and maintenance of outdoor advertising in zoned and unzoned commercial and industrial areas authorized by sections 226.520(3) and 226.520(4), RSMo.

(1) Definitions (see 7 CSR 10-6.015).

(2) Criteria for Determination of Zoned and Unzoned Commercial and Industrial Areas.

(A) Zoned Commercial and Industrial Areas. The following does not constitute zoned commercial or industrial area:

1. An area or district which has been spot zoned or strip zoned for outdoor advertising;

2. An area or district which merely allows commercial or industrial activities as well as outdoor advertising as an incident to the primary land use which is other than a zoned commercial or industrial area. Examples are: agricultural, rural, unclassified, greenbelt, buffer zoning or other similar classifications which may allow specified commercial or industrial land uses including outdoor advertising; and residential and multi-family zoning classifications which may allow outdoor advertising and specified home occupations such as barber shops, beauty shops, kennels, repair shops or professional offices; and

3. An area or district which requires a special use permit, special zoning classification or variance as a condition to the use of the area for an activity generally considered industrial or commercial.

(B) Unzoned Commercial and Industrial Area. In order to qualify as an unzoned commercial or industrial area, the area must satisfy the primary use test found in subsection (2)(C).

(C) Primary Use Test.

1. In General. In order for an area to qualify as an unzoned commercial or industrial area, the primary use or activity conducted in the area must be of a type customarily and generally required by local comprehensive zoning authorities in Missouri to be restricted as a primary use to areas which are zoned industrial or commercial. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an unzoned commercial or industrial area. Activities incidental to the primary use of the area, such as a kennel or repair shop in a building or on property which is used primarily as a residence, do not constitute com-

mercial or industrial activities for the purpose of determining the primary use of an unzoned area even though income is derived from the activity. If, however, the activity is primary and local comprehensive zoning authorities in Missouri would customarily and generally require the use to be restricted to a commercial or industrial area, then the activity constitutes a commercial or industrial activity for purposes of determining the primary use of an area even though the owner or occupant of the land may also live on the property.

2. Visible. The purported commercial or industrial activity must be visible from the main-traveled way within the boundaries of that unzoned commercial or industrial area by a motorist of normal visual acuity traveling at the maximum posted speed limit on the main-traveled way of the highway. Visibility will be determined at the time of the field inspection by the department's authorized representative.

3. Recognizable. The purported commercial or industrial activity must be recognizable as a commercial or industrial enterprise as viewed from both directions of travel of the adjacent interstate or primary highway. In addition, the activity must comply with each of the following:

A. Structure and grounds requirements—

(I) Area. Any structure to be used as a business or office must have an enclosed area of two hundred (200) square feet or more;

(II) Foundation. Any structure to be used as a business or office must be affixed on a slab, piers or foundation;

(III) Access. Any structure to be used as a business or office must have approved access from a roadway and readily accessible by the motorist to a defined customer parking lot adjacent to business building;

(IV) Utilities. Any structure to be used as a business or office must have normal utilities. Minimum utility service shall include: business telephone, electricity, water service and waste water disposal, all in compliance with appropriate local, state and county rules. Should a state, county or local rule not exist, compliance with minimum utility service shall be determined at the time of field inspection by the department's authorized representative;

(V) Identification. The purported enterprise must be identified as a commercial or industrial activity which may be accomplished by on-premises signing or outside visible display of product;

(VI) Use. Any structure to be used as a business or office must be used exclu-

sively for the purported commercial or industrial activity; and

(VII) Limits. Limits of the business activity shall be in accordance with section 226.540(4), RSMo;

B. Activity requirements. In order to be considered a commercial or industrial activity for the purpose of outdoor advertising regulation, the following conditions must be met:

(I) Hours must be posted and staffed accordingly or phone numbers, facsimile number or E-mail address for communication posted so that the public can contact the owner of the business activity or the designated employee(s) for an appointment at the business location;

(II) The purported activity or enterprise shall maintain all necessary business licenses, occupancy permits, sales tax and other records as may be required by applicable state, county or local law or ordinance;

(III) A sufficient inventory of products must be maintained for immediate sale or delivery to the consumer. If the product is a service, it must be available for purchase on the premises; and

(IV) The purported activity or enterprise must be in active operation a minimum of one hundred eighty (180) days prior to the issuance of any outdoor advertising permit. The one hundred eighty (180)-day time frame begins when the business activity is in compliance with commission business requirements; and

C. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply:

(I) Self-propelled vehicles will not qualify for use as a business or office for the purpose of these rules;

(II) All wheels; axles and springs must be removed;

(III) The vehicle must be permanently secured on piers, pad or foundations;

(IV) The vehicle must be tied down in accordance with minimum code requirements. If no code, the vehicle must be affixed to piers, pad or foundation; and

(V) Any structure to be used as a business or office must have normal utilities. Minimum utility service shall include; business telephone, electricity, water service and waste water disposal, all in compliance with appropriate local, state and county rules. Should a state, county or local rule not exist, compliance with minimum utility service shall be determined at the time of field inspection by the department's authorized representative.

(3) Standards for Allowed Signs.

(A) In General. Outdoor advertising shall be permitted only—

1. In accordance with the sizing, spacing, lighting and location requirements for outdoor advertising erected and maintained in zoned and unzoned commercial and industrial areas as authorized by section 226.540, RSMo;

2. On the same side of the interstate or federal aid freeway primary highway as the commercial or industrial activity;

3. Within six hundred feet (600') of the commercial or industrial activity or from any commercial or industrial structure meeting the structure and grounds requirements of subparagraph (2)(C)3.A. of this rule; and

4. In accordance with department permit requirements (see 7 CSR 10-6.070).

(B) Measurement of Distances. Distances shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to signs located on the same side of the highway involved. The sign measurement points shall be those which yield the shortest distance between the structures. If the signs are angled or V-shaped, the nearest points of the structures to each other are to be used.

(4) Multiple Sign Structures. A back-to-back sign, double-faced sign or V-type sign is a sign with two (2) sides or outdoor advertising faces owned by the same sign owner which are physically contiguous, or connected by the same structure or cross bracing or located not more than fifteen feet (15') apart at their nearest point. New double-stacked, as defined in 7 CSR 10-6.015(11), structures are prohibited but such signs lawfully in existence on August 28, 1999, may be rebuilt, altered, or modified one time, whereupon such signs shall be deemed legal non-conforming. Each side or face of this multiple sign structure shall be considered as one (1) sign for the purpose of determining whether or not it complies with the sizing, lighting, spacing and location requirements of section 226.540, RSMo provided that each face or side of a multiple sign structure is limited to a total of eight hundred (800) square feet in area. The total area of each side or face shall be measured by the smallest square, rectangle, triangle, circle or contiguous combination of shapes which will encompass the display(s) of each side or face.

(5) Permits (see 7 CSR 10-6.070 for state permit requirements).

(6) A permit may be granted for an automatic changeable facing provided—

(A) The static display time for each message is a minimum of eight (8) seconds;

(B) The time to completely change from one message to the next is a maximum of two (2) seconds;

(C) The change of message must occur simultaneously for the entire sign face; and

(D) The application meets all other permitting requirements. Any such sign shall be designed such that the sign will freeze in one position if a malfunction occurs.

AUTHORITY: sections 226.150, RSMo 1994 and 226.530, RSMo Supp. 1998. Original rule filed Feb. 6, 1974, effective March 8, 1974. Amended: Filed June 9, 1975, effective July 9, 1975. Rescinded and readopted: Filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed Feb. 4, 1991, effective Aug. 30, 1991. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972, 1995.*

State ex rel State Highway Commission v. Heil, 597 SW2d 257 (Mo. App. 1980). The selling of gravel by a farmer from his/her gravel pit is a "commercial" pursuit in contemplation of section 226.540, RSMo (Supp. 1976).

7 CSR 10-6.050 Outdoor Advertising Beyond Six Hundred Sixty Feet of the Right-of-Way

PURPOSE: This rule applies to outdoor advertising erected or maintained beyond six hundred sixty feet of the right-of-way visible from the main-traveled way of the interstate or primary highway system and erected with the purpose of its message being read from the traveled way. This outdoor advertising is regulated under section 226.527, RSMo and 23 U.S.C. 131(c).

(1) Definitions (see 7 CSR 10-6.015).

(2) Determination of Urban Areas. The term urban area is defined by section 226.510(6), RSMo. That section also indicates how urban areas are determined. Maps of urban areas located within a department district are available for inspection at that area office (see 7 CSR 10-6.010).

(3) Determination of Purpose. The chief engineer shall determine under section 226.527, RSMo when a sign is erected with the purpose of its message being read from the main-traveled way of an interstate or primary highway.

(A) Criteria. The determination shall be made after consideration of, but not limited to, the following and any other relevant criteria:

1. Angle. The positioning or angle of a sign to an adjacent highway;

2. Size. The distance of the sign from the controlled highway in relation to the size of the sign. If a sign is large enough so that its message can be read from the highway, it may be assigned to that highway;

3. Message content. Whether or not the sign's message is applicable to a particular highway;

4. Physical obstructions. The presence of or selective removal of physical obstructions, natural or man-made, impairing a motorist's view of the sign from the highway; and

5. Exposure time. The period of time a motorist traveling on the adjacent highway at the maximum posted speed limit would be exposed to the sign's message. A sign which cannot be read from the adjacent highway should not be assigned to that highway.

(B) Multiple Highways. A sign may be visible or erected, or both, with the purpose of its message being read from two (2) or more interstate or primary highways. These signs must comply with the sizing, lighting, spacing, location and permit requirements applicable to each interstate or primary highway. Where there is a conflict between sizing, lighting, spacing or location requirements of sections 226.500—226.600, RSMo, the most restrictive requirements shall prevail.

(4) Permits (see 7 CSR 10-6.070 for state permit requirements).

AUTHORITY: sections 226.150, RSMo 1994 and 226.530, RSMo Supp. 1998. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972, 1995.*

7 CSR 10-6.060 Nonconforming Signs

PURPOSE: This rule, consistent with 23 CFR 750.707, categorizes and establishes criteria

for the maintenance and removal of nonconforming signs under sections 226.500—226.600, RSMo which were lawfully erected but which fail to conform to the sizing, lighting, spacing or location requirements of state statutes enacted at a later date or because of changed conditions. Included in this rule are standards for the selection and exemption from removal of specific tourist area signs, which are authorized to be maintained by section 226.520(5), RSMo, 23 U.S.C. 131(o) and 23 CFR 750.501, and landmark signs, which are authorized to be maintained by section 226.545, RSMo, 23 U.S.C. 131(c)(4) and 23 CFR 750.710. This rule does not apply to signs erected on state right-of-way by the State Highway Commission under sections 226.525 and 226.535, RSMo or to directional and official signs authorized by section 226.520(1), RSMo. This rule also does not apply to signs not lawfully in existence under section 226.550.2, RSMo and unlawful signs under section 226.580, RSMo.

(1) Definitions (see 7 CSR 10-6.015).

(2) Categories of Nonconforming Signs. Unless these signs are unlawful signs under section 226.580, RSMo and 7 CSR 10-6.080(2), the following nonconforming signs, subsections (2)(A)–(D) of this rule, may be maintained under the specified conditions:

(A) Signs Located Within Commercial or Industrial Areas. Any signs within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main-traveled way of any highway which is a part of the interstate or primary system which were lawfully erected and which are located within zoned or unzoned commercial or industrial areas but which under state statutes enacted at a later date or because of changed conditions fail to meet the sizing, lighting, spacing or location requirements of sections 226.500–226.600, RSMo or 7 CSR 10-6.020 are nonconforming signs. These signs may be maintained subject to the criteria for maintenance of nonconforming signs, in section (3);

(B) Signs Located Outside Commercial or Industrial Areas. Any signs within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main-traveled way of any highway which is a part of the interstate or primary system which were lawfully erected and which are not located in zoned or unzoned commercial or industrial areas but which under state statutes enacted at a later date or because of changed conditions fail to meet the sizing, lighting, spacing or location requirements of sections 226.500–226.600, RSMo or 7 CSR 10-6.020 are nonconforming signs. These signs may be

maintained subject to the criteria for maintenance of nonconforming signs listed in section (3), only until removed by the commission upon the payment of just compensation under section 226.570, RSMo; except, those signs qualifying as specific tourist area signs or as landmark signs may be maintained subject to the criteria for maintenance of nonconforming signs, in section (3);

(C) Signs Located Beyond Six Hundred Sixty Feet (660') of the Right-of-Way. Any signs lawfully erected, either outside of urban areas prior to August 13, 1976, or inside urban areas at any time which are located beyond six hundred sixty feet (660') of the right-of-way, visible from the main-traveled way of the interstate or primary system and erected with the purpose of its message being read from the traveled way, except that outdoor advertising as is defined in sections 226.520(1) and (2), RSMo, but which under state statutes enacted at a later date or which because of changed conditions fail to meet the location requirements of sections 226.500–226.600, RSMo or 7 CSR 10-6.020 are nonconforming signs. These signs may be maintained subject to the criteria for maintenance of nonconforming signs, listed in section (3), only until removed by the commission upon the payment of just compensation under section 226.570, RSMo; except those signs qualifying as landmark signs may be maintained subject to the criteria for maintenance of nonconforming signs, in section (3);

(D) Landmark Signs. Any signs lawfully erected on or before October 22, 1965, including signs on farm structures or natural surfaces regardless of their advertising message at the date of erection, which are determined by the commission with the approval of the secretary of transportation to have been of historical or artistic significance on August 13, 1976, but which under state statutes enacted after these signs were erected or because of changed conditions fail to meet the sizing, spacing, lighting or location requirements of sections 226.500–226.600, RSMo or 7 CSR 10-6.020 are nonconforming signs. Landmark signs may be located either within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main-traveled way of any highway which is a part of the interstate or primary system or beyond six hundred sixty feet (660') of the right-of-way, visible from the main-traveled way of the interstate or primary system and erected with the purpose of its message being read from the traveled way. These landmark signs may be maintained subject to the criteria for maintenance of nonconforming signs in section (3).

(3) Criteria for Maintenance of Nonconforming Signs. Reasonable maintenance and repair of nonconforming signs is permissible however, violation of any one (1) or more of the following subsections (3)(A)–(E) of this rule disqualifies any sign from being maintained as a nonconforming sign and subjects it to removal by the commission without the payment of just compensation:

(A) Message Content. Changes of advertising message content are permissible subject to the following:

1. Landmark signs. In order to continue to qualify as a landmark sign after August 13, 1976, the sign's advertising message shall not be substantially changed, except that a change in mileage, address, routing, course or direction is permissible;

(B) Type of Materials. The type of materials used in the construction of a sign shall not be changed after the date the sign becomes a nonconforming sign, except that a change of facing, panels, message or advertising does not constitute a change of type of materials. The routine replacement of border and trim shall be permitted;

(C) Size. The size or area of a sign shall not be increased after the date the sign becomes a nonconforming sign. A net decrease in the outside dimensions of the advertising copy portion of the device will be permitted;

(D) Relocation or Repair of Nonconforming Signs. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign is a new erection as of the date the relocation or repair is completed and these signs must then comply with the then effective sizing, lighting, spacing, location and permit requirements of sections 226.500–226.600, RSMo. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign voids any permit issued by the commission for the sign and the fee shall be retained by the commission.

1. Repair of any deteriorated or damaged nonconforming sign after the date the sign becomes a nonconforming sign is prohibited. A deteriorated or damaged nonconforming sign is a sign which needs or requires the replacement of fifty percent (50%) or more of the poles or vertical supports. A nonconforming sign which has only a deteriorated or damaged face shall not constitute a deteriorated or damaged nonconforming sign but shall remain subject to section 226.580.1(4), RSMo. A nonconforming sign damaged by vandalism may be repaired without being in violation of this section. The sign owner has the burden to prove that the

nonconforming sign was damaged by vandalism. Proof of vandalism can be timely reports or complaints to sheriff or proper police departments. Vandalism for purposes of this rule is the willful destruction of a nonconforming sign by a party other than the sign owner, property owner or lessor of the sign or business which is advertised on the sign. Any damage to the nonconforming sign due to carelessness or negligence of any party shall not constitute vandalism.

2. Any movement of a sign structure shall be considered a relocation;

(E) Other Improvements. The following shall be prohibited for nonconforming signs:

1. Illumination of the sign structure by a light(s) either attached or detached, for the purpose of illuminating the display; and

2. Raising or lowering of the height of any sign structure;

(F) Abandonment and Discontinuance. A nonconforming sign shall not be abandoned or discontinued after the date the sign becomes nonconforming. Abandonment or discontinuance occurs whenever—

1. The sign, for a continuous period of twelve (12) months or more, advertises services or products no longer available to the traveling public because the services or products have been discontinued or cannot be obtained at the destination or by the directions indicated on the sign; or

2. The sign, for a continuous period of twelve (12) months or longer, is maintained without an advertising message. The following are examples of signs maintained without an advertising message: A sign with a message which is partially obliterated so as not to identify a particular service or product, a sign which is blank or painted out, a sign structure with no face or a sign with a message consisting solely of the name of the sign owner; and

(G) Notice to Terminate Nonconforming Signs. When a sign is maintained in violation of any one (1) or more of subsections (3)(A)–(F), the district engineer shall issue a notice to terminate nonconforming sign to the sign owner and the owner or occupant of the real property on which the sign is located. The notice to terminate the nonconforming sign shall identify the violation of the criteria for maintenance of the nonconforming sign and the available remedial action to correct the violation which may include removal of the sign. The notice to terminate the nonconforming sign shall also establish the length of time with a maximum time of sixty (60) days possible which is available for taking the remedial action or removing the sign (if remedial action other than removal of the sign is not available). The notice to terminate the

nonconforming sign may designate a time of less than sixty (60) days for remedial action. Any time which is stated in a notice to terminate the nonconforming sign for taking remedial action shall not change the time period to request an administrative hearing. Any person given a notice to terminate the nonconforming sign by the department's district engineer shall be entitled to an administrative hearing pursuant to the provisions of sections 536.067–536.090, RSMo by filing a timely written request for hearing with the district engineer who issued the notice to terminate the nonconforming sign at the address shown on the notice to terminate the nonconforming sign. The request for hearing must be received by the district engineer within thirty (30) days after receipt of the notice to terminate the nonconforming sign by the applicant. The request for hearing must be sufficient to identify the applicant requesting the hearing and each outdoor advertising structure for which a hearing is requested. The act of mailing the request for hearing does not constitute receipt by the district engineer. No answer or other response by the commission is necessary. An applicant will not be entitled to a hearing if an applicant fails to timely request a hearing. Upon receipt of a timely request for hearing, the department's district engineer shall forward the request to the hearing examiner for the commission. Hearings for notices to terminate the nonconforming sign shall be conducted pursuant to 7 CSR 10-6.090.

(4) Permits (see 7 CSR 10-6.070 for state permit requirements).

AUTHORITY: sections 226.150, RSMo 1994 and 226.530, RSMo Supp. 1998. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972, 1995.*

7 CSR 10-6.070 Permits for Outdoor Advertising

PURPOSE: This rule provides a uniform procedure for sign owners to obtain and maintain permits issued by the State Highway Commission for outdoor advertising specified by section 226.550, RSMo.

(1) Definitions (see 7 CSR 10-6.015).

(2) Outdoor Advertising Subject to Permit Requirement.

(A) Permits Required. Sign owners or the owners of the land on which these signs are located, regardless of when the sign was erected, must obtain permits from the commission for the following outdoor advertising erected or maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main-traveled way of any highway which is a part of the interstate or primary system:

1. Directional and other official signs. (see sections 226.550.1 and .2 and 226.520(1), RSMo and 7 CSR 10-6.020). Only one (1) permit will be issued for sign structures with multiple displays;

2. Signs located in areas zoned commercial and industrial (see sections 226.550.1 and .2, RSMo and 7 CSR 10-6.040(2)(A));

3. Signs located in unzoned commercial or industrial areas except on-premises signs (see sections 226.520(4), 226.540(4) and 226.550.1 and .2, RSMo and 7 CSR 10-6.040(2)(B)). Only one (1) permit will be issued for multiple sign structures as back-to-back signs, double-faced signs and V-type signs; and

4. Nonconforming signs wherever located except on-premises signs (see sections 226.550.1 and 2, RSMo and 7 CSR 10-6.060).

(B) Multiple Highways. A sign may be visible or erected, or both, with the purpose of its message being read from two (2) or more interstate or primary highways. These signs must comply with the sizing, lighting, spacing, location and permit requirements applicable to each interstate or primary highway. Where there is a conflict between the sizing, lighting, spacing or location requirements of sections 226.500–226.600, RSMo, the most restrictive requirements shall prevail.

(C) Size. Size limitations and requirements are listed in section 226.540, RSMo. An addition of a temporary cut-out or extension up to thirty-three percent (33%) of the sign size will be allowed. A copy of the display contract or a letter outlying the beginning and ending dates of the display shall be furnished before the cut-out or extension is added.

(3) Outdoor Advertising Not Eligible for Permits. Unlawful signs are not eligible for permits from the commission. Applications and fees for permits from the sign owners or the owners of the land on which these signs are located shall be rejected and returned with any fee submitted to the applicant by the district engineer.

(4) Permit Applications and Fees.

(A) Information. Any person may obtain permit application information, including copies of sections 226.500–226.600, RSMo, administrative rules, application forms, maps of the interstate and primary highway systems, and district maps showing the location of district offices and the counties within each area, in person, by writing or by telephoning the district engineer at any department district office. It is most efficient to contact the district engineer of the county in which the outdoor advertising is located (see 7 CSR 10-6.010).

(B) Filing of Permit Applications and Permit Fees. Sign owners or owners of the land on which outdoor advertising is located must apply for permits from the commission for outdoor advertising specified by section 226.550, RSMo (see section (2)). Permit applications must be—

1. Timely submitted. For new outdoor advertising to be erected, the application for permit shall be submitted before erecting or starting construction of any sign requiring a permit from the commission. The district engineer will cause a field inspection to be made of the proposed location to determine whether or not the site complies with the requirements of sections 226.500–226.600, RSMo. For all nonconforming outdoor advertising requiring a permit from the commission and for any other existing outdoor advertising lawfully erected, but for failure to obtain a permit prior to its erection from the commission, the application for permit must be submitted to and received by the district engineer within thirty (30) days of receipt by the applicant of a notice to remove outdoor advertising under section 226.580, RSMo from the commission specifying the failure to obtain or maintain a permit for a sign for which a permit and biennial inspection is required by section 226.550, RSMo. Failure of the applicant to timely submit an application for permit shall be cause for the district engineer to reject and return the application for permit;

2. Submitted to the district engineer for the county in which the outdoor advertising is located (see 7 CSR 10-6.010);

3. Submitted upon forms supplied by the commission. These forms will be supplied by the district engineer upon request. These forms must be completed in full. Incomplete or incorrectly completed permit application forms shall be rejected or returned by the district engineer to the applicant; and

4. Submitted to the district engineer along with the required permit fee.

A. The permit fee is twenty-eight dollars and fifty cents (\$28.50), except for tax exempt religious organizations which shall be

granted a permit for signs less than seventy-six (76) square feet without payment of the fee. For purposes of this rule, a tax exempt religious organization is one which submits a copy of its certification of tax exempt status from the Internal Revenue Service along with its permit application. Religious organizations as defined in subdivision (11) of section 313.005, RSMo, service organizations as defined in subdivision (12) of section 313.005, RSMo, veterans' organizations as defined in subdivision (14) of section 313.005, RSMo, and fraternal organizations as defined in subdivision (8) of section 313.005, RSMo, may be granted a permit for a sign less than seventy-six (76) square feet without payment of the permit fee.

B. Failure to submit the correct amount of fee by check, draft or money order payable to "Director of Revenue—Credit State Road Fund" shall be cause for the district engineer to reject and return the application for permit. If assistance is needed in calculating the correct permit fee, contact the district engineer for the county in which the sign is located before filing the application (see 7 CSR 10-6.010).

C. Documentation and assistance required upon request. Any applicant must submit to the district engineer upon written request, written information or documentation, as specified in the request, sufficient for the chief engineer to determine whether or not a permit should be issued under section 226.550, RSMo. Also, any applicant may be asked to assist the district engineer in locating a sign location described in an application for permit. Refusal or failure of an applicant to comply with a request for information, documentation or assistance shall be grounds for the district engineer to reject and return the application for permit.

D. Misrepresentation of fact. Any misrepresentation of material fact by an applicant on any application for permit shall be grounds for the district engineer to reject and return the application for permit.

E. All fees must be paid. No permit shall be granted to any applicant who is delinquent in the payment of any outdoor advertising fees to the commission, including any removal costs or biennial inspection fees associated with any sign.

(5) Informal Hearing on Denial of Permit.

(A) Request for Informal Hearing. If denied a permit, the applicant may have twenty (20) working days to request an informal hearing by the outdoor advertising permit review committee for the purpose of appealing the denial. The applicant shall submit its request for an informal hearing to the

Secretary, Missouri Highway and Transportation Commission, P.O. Box 270, Jefferson City, MO 65102.

(B) Procedure. If the applicant requests a timely informal hearing, the commission shall advise the applicant of the time, date and place. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

(6) Permits.

(A) Issue and Use of Permit. Upon proper application and payment of fee for any sign eligible for a permit, the district engineer shall issue a one (1)-time permanent permit. The permit owner must erect the sign, if not already in existence within two (2) years of the date the permit was issued by the commission. The permit holder must contact the outdoor advertising office in that area in writing within thirty (30) days of the sign's erection. No permits will be granted at locations where unpermitted tree cutting has taken place.

(B) Transfer of Permit. When a sign owner transfers ownership of a sign for which a permit is required by section 226.550, RSMo, the new sign owner shall notify the commission by filing an application for transfer, along with a ten dollar (\$10) fee, on a form supplied by the district engineer that issued the original permit which is the district engineer for the county in which the sign is located (see 7 CSR 10-6.010). Applications must be completed in full. Incomplete or incorrectly completed application forms shall be rejected or returned by the outdoor advertising permit specialist to the applicant.

(C) Voiding of Permits. Any misrepresentation of material fact on any application under this section or violation of any one (1) or more of the requirements of this section shall be grounds for the district engineer to void the permit. Any existing sign is then maintained without a permit and subject to removal under sections 226.580, RSMo and 7 CSR 10-6.080(2). Unpermitted tree cutting or trimming in front of a permitted sign or maintaining a sign via the state right-of-way shall be grounds for voiding a permit. The district engineer shall notify the sign owner and the owner or occupant of the land on which the sign is or was located in writing of the voiding of the permit. Permit fees shall be retained by the commission. The district engineer shall issue a notice to remove outdoor advertising under section 226.580.3, RSMo.

(7) Biennial Inspection and Fee. The commission shall collect on or before the second annual anniversary of the date the permit was

issued and each two (2) years after that, a biennial inspection fee of twenty-eight dollars and fifty cents (\$28.50). This inspection fee shall apply to all signs for which a permit must be obtained or for which a permit is obtained.

(8) Relocation. Relocation of any sign for any reason whatsoever is a new erection as of the date the relocation is completed and these signs must then comply with the then effective sizing, lighting, spacing, location and permit requirements of sections 226.500–226.600, RSMo. Relocation of any sign voids any permit issued by the commission for that sign and the fee shall be retained by the commission. The district engineer shall issue a notice to remove outdoor advertising under section 226.580, RSMo. A new application for permit must be filed with the district engineer and the sign can only be relocated in compliance with the sizing, lighting, spacing and location requirements of sections 226.500–226.600, RSMo.

(9) Voiding of Permit. The issuance of a notice to remove outdoor advertising or a notice to terminate a nonconforming sign shall be notice that any permit or the sign is void. No other notice for voiding a permit is necessary.

AUTHORITY: sections 226.150, RSMo 1994 and 226.530, RSMo Supp 1998. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972, 1995.*

7 CSR 10-6.080 Removal of Outdoor Advertising Without Compensation

PURPOSE: This rule provides criteria for the removal of unlawful signs and signs not lawfully existing without compensation by the State Highway Commission under sections 226.550 and 226.580, RSMo.

(1) Definitions (see 7 CSR 10-6.015).

(2) Removal of Unlawful Signs. The district engineer shall serve a notice to remove outdoor advertising under section 226.580.3., RSMo for the following signs which are unlawful because they have been determined by the district engineer to be:

(A) Signs erected after March 30, 1972, contrary to the provisions of sections 226.500–226.600, RSMo, that is all signs erected, relocated or reconstructed after March 30, 1972, in violation of the then effective sizing, lighting, spacing and location requirements of sections 226.500–226.600, RSMo. Relocation of any sign or repair of any deteriorated or damaged nonconforming sign for any reason, is a new erection as of the date the relocation or reconstruction is completed and these signs must then comply with the then effective sizing, lighting, spacing, location and permit requirements of sections 226.500–226.600, RSMo or they shall then be subject to removal without compensation by the commission under section 226.580.1(1), RSMo;

(B) Signs for which a permit is not obtained as prescribed in sections 226.500–226.600, RSMo (see 7 CSR 10-6.070);

(C) Signs for which biennial inspection fees are delinquent. (see section 226.580.1(2), RSMo);

(D) Signs which are obsolete, that is signs that for a continuous period of one (1) year or longer have advertised services or products no longer available to the traveling public because the services or products have been discontinued or cannot be obtained at the destination or by the directions indicated on the signs. A sign shall not be considered obsolete solely because it does not carry an advertising message for a period of less than one (1) year;

(E) Signs that are not in good repair, that is signs with poles, frames, braces, panels or facings which are broken or damaged or not securely affixed to a substantial structure or which are faded, blistered, cracked, peeled, chipped, or torn to the extent the total message is not discernable by a motorist of normal visual acuity traveling at the maximum speed limit posted on the main traveled way of the adjacent interstate or primary highway. A motorist of normal visual acuity means any person licensed by Missouri to operate a motor vehicle upon the highways of this state;

(F) Signs which attempt or appear to attempt to regulate, warn or direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device. These signs include, but are not limited to, signs which display flashing amber or red lights, stop signs or yield signs or highway designation markers, such as an interstate shield;

(G) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features, except landmark signs under section 226.545, RSMo;

(H) Signs erected after August 13, 1976, beyond six hundred and sixty feet (660') of the right-of-way outside of urban areas, visible from the main-traveled way of the interstate or primary system and erected with the purpose of their message being read from the traveled way, except directional and official signs under section 226.520(1), RSMo and on-premises signs under section 226.520(2), RSMo; and

(I) Signs erected before March 30, 1972 but on or after January 1, 1968 contrary to sections 226.500–226.600, RSMo.

(3) Removal of Nonconforming Signs. The district engineer shall issue a notice to terminate a nonconforming sign pursuant to 7 CSR 10-6.060(3)(G).

(4) Authority to Withdraw Notices. The chief engineer is authorized to withdraw any notice to remove outdoor advertising issued by the district engineer under section 226.580, RSMo or any notice to terminate a nonconforming sign issued by the district engineer under 7 CSR 10-6.060(3)(G) for any one (1) of the following reasons: where the notice to remove was improperly issued by the district engineer because of a mistake of law or fact, where the sign has been removed or the basis of unlawfulness has been corrected or has ceased to exist, or where it is finally adjudicated that the notice to remove was not authorized by sections 226.500–226.600, RSMo. If a timely request for administrative review of notice to remove outdoor advertising or a notice to terminate nonconforming sign has been made, the chief engineer or district engineer shall advise the hearing examiner of any withdrawal of a notice to remove outdoor advertising or a notice to terminate nonconforming sign.

(5) Criteria for Determination of Signs Advertising Tourist-Oriented Type Business. Signs advertising tourist-oriented type business means outdoor advertising, as determined by the chief engineer, displaying directional information about activities and goods limited to gasoline and associated vehicle services such as fuel, oil, water, lubrication, tires and repairs; food; lodging; camping; natively produced handicraft goods; amusement facilities; public places owned or operated by federal, state or local governments or their agencies; publicly- or privately-owned natural phenomena, historic, cultural, scientific, educational and religious sites; or areas of natural scenic beauty or naturally suited for outdoor recreation. Directional information consists of mileage, route numbers, exit numbers, or the like, useful to the traveler in

locating these activities and goods. The term signs advertising tourist-oriented type business, as used in section 226.580.6., RSMo applies only to signs erected before March 30, 1972.

(6) Structures Which Have Never Displayed an Advertising Message. Structures, including poles, which have never displayed advertising or informative content are subject to control and removal when advertising content visible from the main-traveled way is added or affixed.

(7) Remedial Action. Any notice to remove outdoor advertising which is issued by the district engineer shall specify any available remedial action to correct the violation. The notice to remove outdoor advertising shall also establish the length of time which is available to take the remedial action. Any length of time specificized for taking remedial action shall not lengthen the time available for requesting an administrative hearing. The remedial action which is specified in the notice to remove outdoor advertising may include the removal of the violating sign.

AUTHORITY: sections 226.150 and 226.530, RSMo 1986. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994.*

**Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972.*

7 CSR 10-6.085 Cutting and Trimming of Vegetation on Right-of-Way

PURPOSE: This rule provides for the cutting and trimming of vegetation under controlled conditions on highway right-of-way when this vegetation obscures a lawful sign under sections 226.130 and 226.585, RSMo.

(1) Permits. A permit is required to cut or trim any vegetation in front of any lawful sign. A separate permit is required for each sign structure. Permits to cut vegetation will be issued only for lawful signs which are at least five (5) years old. Permits to trim trees will be issued only after a lawful sign is at least two (2) years old. A vegetation permit may be denied or limited if the plan is deemed to be detrimental to the stability of the state right-of-way as determined by the Roadside Enhancement Manager.

(A) Application. A permit application to do cutting and trimming shall be obtained from the area office (see 7 CSR 10-6.010).

Applicants shall serve a copy of their permit application upon adjacent property owners and shall provide proof of service at the time the application is filed in the area office. Proof of service may be a copy of a certified return mail receipt. Objections by adjacent property owners may serve to limit the scope of the permit as prescribed in subsection (1)(C) of this rule.

(B) Fee. The cost of a permit for trimming and cutting is determined by the vegetation to be removed. All diameter measurements contained in this rule shall be measured at four and one-half feet (4 1/2') above ground level. There is no fee to trim trees in accordance with subsection (3)(F) of this rule or remove brush and trees with a diameter of less than six inches (6"), but a permit will still be required. The fee to remove each tree with a diameter equal to or greater than six inches (6") is one hundred dollars (\$100) plus an additional one hundred dollars (\$100) for every inch of diameter greater than six inches (6"). Measurements for diameter will be rounded down to the nearest inch. For example, the fee for trimming or removing a tree six and three-fourths inches (6 3/4") in diameter would be one hundred dollars (\$100); the fee for a tree ten and one-half inches (10 1/2") in diameter would be five hundred dollars (\$500). Also, a performance bond in an amount up to one thousand dollars (\$1,000) shall be required if the district engineer or his/her representative deems it necessary to ensure restoration of highway right-of-way. Fees will be placed in a roadside enhancement fund and utilized by the department to plant trees and do other landscaping on highway right-of-way. A cash bond equal to the amount of vegetation to be removed must be filed with the department prior to any work on the right-of-way. All fees must be paid prior to the commencement of any tree trimming.

(C) Scope. Permits will only allow the cutting of vegetation necessary to clear the sign's visibility zone as determined by the permit inspector and the applicant at the time the permit is issued. This visibility zone is an area on the right-of-way four hundred fifty feet (450') on interstate and freeway and non-freeway primary highways. The length is from the edge of the sign face closest to the highway pavement in a direction parallel to the pavement.

(D) Duration. All permits shall expire after sixty (60) days.

(2) Access. Access to the cutting or trimming area shall be from private property or outer roadways and cannot be made from the through traffic roadways on the interstate and

freeway primary highway systems. On other primary roads, access will be from locations approved by the department. Parking of equipment or placement of materials on the traffic lanes or shoulders is strictly prohibited.

(3) Conditions. The following conditions shall apply to trimming and cutting of vegetation on highway right-of-way:

(A) Removal. All vegetation trimmed or cut will be removed from the right-of-way and no burning on the right-of-way is permitted. Trees are to be cut to ground level;

(B) Damage to Right-of-Way. Applicant will be held responsible for any damage to the right-of-way. Any destruction of turf will require the applicant to restore the right-of-way to a like or better condition, which may require seeding, mulching or sodding of the right-of-way which has been disturbed;

(C) Liability Insurance. The applicant shall carry liability insurance with a limit of at least one (1) million dollars per occurrence;

(D) Herbicides. Only herbicides approved by the district engineer may be used to trim or remove vegetation. Only general use non-restricted herbicides may be used. All herbicides must be used in strict accord with the manufacturer's instructions on the label. Restricted use herbicides may not be used on right-of-way. Applicator must be a certified commercial applicator or under the supervision of a certified commercial applicator. The Missouri Department of Transportation (MoDOT) roadside enhancement manager or their authorized representative will approve the area to be sprayed before a permit is issued. Applicant must avoid desirable vegetation. Holder of the permit is liable for all damages or damage claims resulting from the herbicide application. Applicant must comply with the Missouri Pesticide Use Act, section 281.005 through 281.115, RSMo (as amended). In U.S. Forest Service areas, permit applicants must obtain written permission for use of herbicides from the district engineer. The fee for controlling the growth of a tree, with herbicides, is determined in the same manner as tree removal under subsection (1)(B). All trees controlled with herbicides, requiring a fee, shall be cut down and removed within sixty (60) days of treatment;

(E) Indemnity. Applicants shall agree to indemnify and hold harmless the commission against any damage or harm to persons, including commission employees, or property which may occur as a result of or in the course of its cutting or trimming of vegetation and use of herbicides;

(F) Trimming of Trees. Trees of any size may be trimmed in accordance with the following guidelines:

1. Trimming is permitted any time of year;

2. A tree may not have more than one-third (1/3) of its canopy removed in a single pruning operation. For pruning operations, the "National Arborist Association Standards" shall be used as a guideline to insure trees are being pruned properly and all pruning must be done in accordance with "National Arborist Association Standards." Pruning cuts should be made so that the tree may close the resulting wound as easily as possible. Generally, remove parts of a twig or branch at their origin. Remove tips of branches back to a good bud or to the next larger branch. The final pruning cut should be made along the natural branch collar and not flush with the trunk. Any additional pruning of this magnitude cannot be repeated for three (3) full years (thirty-six (36) months) on hardwood species. A "Tree Pruning Chart" developed by MoDOT is used to determine the maximum amount of canopy that can be removed in a single pruning operation. A copy of the chart may be obtained by contacting the area permit specialist; and

3. In situations where pruning is to be done on a stand of trees and it is not practical to distinguish individual trees from the stand, the stand of trees should be judged by the canopy height of the stand. The amount of tree height to be removed should be determined from the "Tree Pruning Chart" according to the canopy height of the stand of trees. Proper tree pruning practices are to be observed in reducing the height of the stand of trees, just as it would be for an individual tree. Brush over six feet (6') that is approved for removal should be cut first and the stump(s) treated with herbicides. Illustrations are available to assist in proper pruning. A copy may be obtained by contacting the area permit specialist; and

(G) Destruction of Vegetation. A vegetation permit will be revoked if an applicant destroys desired vegetation due to excessive trimming or inappropriate use of herbicides on vegetation. If the permit is revoked due to excessive trimming or inappropriate use of herbicides, the department will retain and collect against any bonds filed.

(4) Appeal for Denial of Permit to Cut or Trim. If denied a permit to cut or trim, the applicant has twenty (20) working days to submit a written appeal to the division engineer, Right-of-Way Division, Missouri Highways and Transportation Department, P.O. Box 270, Jefferson City, MO 65102.

AUTHORITY: sections 226.150 and 226.585, RSMo 1994 and 226.530, RSMo Supp. 1998.* Original rule filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000.

*Original authority: 226.150, RSMo 1939, amended 1977; 226.530, RSMo 1965, amended 1972, 1995; and 226.585, RSMo 1992.

7 CSR 10-6.090 Administrative Review of Notices to Remove Outdoor Advertising and to Terminate Nonconforming Signs

PURPOSE: This rule provides a uniform procedure for administrative review of notices to remove outdoor advertising issued by the State Highway Commission under section 226.580, RSMo.

(1) Request for Administrative Review. Any person given a notice to remove outdoor advertising under section 226.580, RSMo and 7 CSR 10-6.080(2) by the district engineer shall be entitled to an administrative hearing under Chapter 536, RSMo by filing a written request for hearing with the district engineer who issued the notice at the address shown on the notice. This request for hearing must be received by the district engineer within thirty (30) days after receipt of the notice to remove outdoor advertising by the applicant. The request for hearing must be sufficient to identify the person(s) requesting the hearing and the outdoor advertising structure for which the hearing is requested. No answer or other response by the commission is necessary. Upon receipt of the request for hearing, the district engineer shall forward the request to the hearing examiner for the commission.

(2) Authority to Dismiss Request for Administrative Review. The hearing examiner is authorized to dismiss any request for administrative review and terminate any further proceedings for the following reason:

(A) When the notice to remove outdoor advertising or notice to terminate a nonconforming sign has been withdrawn under 7 CSR 10-6.080(4);

(B) When the applicant has withdrawn the request for administrative review. The applicant must submit the withdrawal in writing to the hearing examiner; or

(C) When the applicant fails to appear at the time and place for a hearing as scheduled under section (4) of this rule.

(3) Bias. If the hearing examiner determines at any stage of the proceeding that s/he has prior knowledge of specific facts of a case

that s/he deems would prevent the hearing examiner from rendering an objective report and order to the commission, s/he shall immediately cease to act and the commission shall provide an alternate hearing examiner.

(4) Notice of Hearing. The hearing examiner shall give written notice of hearing to the applicant and district engineer fixing a time and place for a hearing, at which time the applicant and district engineer may appear and present evidence. This notice shall be issued by the hearing examiner not less than fifteen (15) days prior to the date fixed for hearing. In instances where more than one (1) request for hearing is received from the same person, the hearing examiner may consolidate those hearings in the interest of economy.

(5) Legal Representation Required. After the request for administrative review is filed with the district engineer, no person shall sign any pleading or brief or shall appear at any administrative hearing in a representative capacity for a corporation, partnership or another individual unless this person is a licensed attorney in good standing in Missouri.

(6) Discovery. Any party may take and use depositions under section 536.073, RSMo. The hearing examiner shall rule on all matters concerning discovery.

(7) Subpoenas. Witnesses may be summoned to appear to give testimony or to give testimony and produce documents at the hearing by a subpoena issued by the hearing examiner, the secretary to the commission or by a notary public at the request of any party.

(8) Continuances. Any hearing which is scheduled by the hearing examiner may be continued at the discretion of the hearing examiner pursuant to Supreme Court Rule 65.

(9) Evidence, Argument and Briefs. The sole issue in a hearing is whether or not a particular sign is an unlawful sign under section 226.580, RSMo and 7 CSR 10-6.080(2) or is being maintained in violation of the rules for maintenance of nonconforming signs under 7 CSR 10-6.060. The commission shall present its evidence first at the hearing in support of its notice to remove outdoor advertising or notice to terminate nonconforming sign which must specify the reason the commission deems the outdoor advertising to be unlawful. After the commission presents its evidence, the applicant may present evidence.

Any party shall have the right of cross-examination. Oral or written evidence must be received in the record to be considered by the commission in reaching its final decision. Any party shall be entitled to present oral argument at the hearing. If oral argument is presented, it shall be preserved and transcribed in the record for the use of the commission in reaching a final decision. Any party may file a written brief or the hearing examiner may require written briefs to be filed within the time set by the hearing examiner for the use of the commission in reaching a final decision. The hearing examiner may rule on all objections and motions to facilitate submission of the case to the commission for its final decision.

(10) Transcript. At the conclusion of the hearing, the hearing examiner shall cause the entire record to be transcribed in sufficient quantities that the original may remain a permanent part of the record. Any party may obtain a copy of the record at the party's expense.

(11) Report and Order. As soon as practical after receipt of the transcript and briefs of the parties, if any, the hearing examiner shall submit to each member of the commission a suggested report and order for consideration by the commission.

(12) Final Decision. As soon as practical after receipt of the suggested report and order, the members of the commission shall read the full record and render a final decision. If briefs or oral arguments are submitted, the members of the commission, in lieu of reading the entire record, may consider those portions of the record cited or referred to in the arguments or briefs to arrive at a final decision. The commission shall render its final decision in writing which shall be supported by competent and substantial evidence upon the whole record and which shall be subject to judicial review under section 536.100, RSMo.

AUTHORITY: sections 226.150 and 226.530, RSMo 1986.* Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994.

*Original authority: 226.150, RSMo 1939, amended 1977 and 226.530, RSMo 1965, amended 1972.

7 CSR 10-6.100 Removal or Concealment of Outdoor Advertising Pending Judicial Review

PURPOSE: This rule provides a uniform procedure for removal or concealment of outdoor advertising pending judicial review of notices to remove outdoor advertising issued by the commission under section 226.580, RSMo.

(1) Removal or Concealment of Advertising Message by Owner. If the commission enters its final decision and order to remove the outdoor advertising structure and a petition for judicial review is filed pursuant to sections 226.580 and 536.100, RSMo, the advertising message contained on the structure shall be removed or concealed within thirty (30) days of the date of filing by the owner of the structure at the owner's expense until the action for judicial review is finally adjudicated. The owner shall be responsible for ensuring the safety of the general public as a result of any such act of removal or concealment. The owner shall remove or conceal all sign panels which contain any portion of the advertising message.

(2) Removal of Advertising Message by Commission. If the owner of the structure refuses or fails to remove or conceal the advertising message within thirty (30) days of filing a petition for judicial review, the commission may remove all sign panels which contain any portion of the advertising message and the owner of the structure shall be liable for the costs of this removal. If the owner refuses to accept the panels after the removal, the commission will store them for a period not to exceed sixty (60) days and recover all costs of transporting and storing the panels from the owner. If after sixty (60) days the owner has not paid all costs associated with the commission's transporting and storing the panels and taken custody of the panels, the commission shall dispose of them as it sees fit with no compensation to the owner.

(3) Commission Liability. The commission shall incur no liability for causing the removal or concealment of the advertising message while an action for review is pending, except if the owner finally prevails in its action for judicial review, commission will compensate the owner at the rate the owner is actually receiving income from the advertiser pursuant to written lease from the time the

message is removed or concealed until the judicial review is final. In the case of a sign carrying its owner's advertising message, or a lease the commission determines was not entered into pursuant to an arm's length transaction, compensation shall be at fair rental value. Fair rental value shall be determined by comparing signs of similar size, location and condition for the period at issue.

AUTHORITY: sections 226.150 and 226.530, RSMo 1986 and 226.580.5., RSMo Supp. 1992.* Original rule filed June 15, 1993, effective Jan. 31, 1994.

*Original authority: 226.150, RSMo 1939, amended 1977; 226.530, RSMo 1965, amended 1972; and 226.580.5., RSMo 1965, amended 1972, 1976, 1992.